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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/963,335 | 09/24/2001 | Kenneth A. Klarfeld | MET2.PAU.23 | 2141 |
| 23386 | 7590 | 07/07/2009 | | |
| Myers Andras Sherman LLP 19900 MacArthur Blvd. Suite 1150 Irvine, CA 92612 | | | | |
| EXAMINER | | | | |
| BROWN, RUEBEN M | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/963,335

Applicant(s)

KLARFELD ET AL.

Examiner

REUBEN M. BROWN

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: 4/22/09-4/22/09
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/24/09 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20-34 & 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Herz, (U.S. Pat # 5,758,257), in view of Williams, (U.S. Pat # 5,945,988).

Considering claims 20 & 28, the claimed method of displaying a TV program to a viewer, comprising *'processing information indicative of preferences of the viewer to develop a viewer characteristic information profile for the viewer'* is met by Herz, col. 10, lines 6-55; col. 11, lines 15-65 thru col. 12, lines 1-55; col. 14, lines 10-65, col. 15, lines 10-60.

'Storing the viewer characteristics information profile on a viewer storage device', is met by col. 40, lines 21-65; col. 41, lines 1-15; col. 45, lines 9-30. *'Presenting the viewer with a first list of TV programs available for viewing, the programs selected in accordance with the characteristics information profile'*, is met by Herz, col. 23, lines 1-18 & col. 25, lines 49-67, which teaches virtual channels of recommended programs or highlighting recommended programs on an EPG or re-ordering the list of programs on the EPG, based on the instant customer's profile.

Regarding the amended claimed feature of *'receiving feedback input from the viewer after viewing the first list, the input requesting different selections than in the first list'*; and *'presenting the viewer with a second list including alternative TV programs for viewing, the alternative list selected in accordance with an alternative characteristics information profile'*, Herz discloses that the system determines if the customer actually watched the video programs

that were recommended by the agreement matrix, col. 26, lines 51-67; col. 31, lines 5-14; col. 46, lines 42-49, for the purpose of adjusting the agreement matrix of a particular customer.

If the customer did not select/watch the predicted program(s), then the system adjusts the customer's profile, based on what program(s) was actually watched. Therefore the disclosure of Herz, reads on the claimed subject matter, since after the agreement matrix is updated, then the customer would be given an updated/adjusted (i.e., different) list of recommended programs, in light of what was actually requested by the customer, see col. 27, lines 1-6; col. 41, lines 8-14; col. 41, lines 57-63.

As for the additionally claimed feature, *'wherein the feedback is based on the viewer answering a query'*, Herz does not specifically discuss the user being giving a prompt for feedback regarding the list. Nevertheless, Williams provides a teaching that after a viewer is prompted with a list of recommended shows, that the system provides the viewer opportunities to view and/or record one or more of the recommended shows, which reads on the claimed *'query'*, see (Fig. 3; Fig. 4; col. 11, lines 21-60). If the viewer in Williams decides not to view or record any of the shows, then the system continues to monitor the viewing habits of the viewer and will subsequently provide a different list of programs. Thus Williams teaches presenting a second list of programs based on feedback from a viewer, from answering a query.

Williams provides other examples of prompting users of the system for feedback for evaluating recommended programming. For instance, the system may prompt the user as to

whether the user liked or preferred one or more commercials, see col. 6, lines 45-65. The feedback from the user is utilized to more accurately suggest programming.

It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of prompting the user of a recommended list to select a program from the instant list or another list will be provided. This is motivated by the desire to attempt to provide the user with programs that will more likely be selected for view and/or record. If the viewer did not select any programs from the first list, then it is wise to provide the user with a different list of programs, based on the updated viewing habits and preferences of the instant viewer, as taught by Williams, see col. 12, lines 1-15.

In another example, the system will monitor the habits of viewer for a certain period of time, and based on the history suggest user profile, along with the associated programming, col. 9, lines 64-67 thru col. 10, lines 1-25. The user is explicitly prompted with the question as to whether the user profile selected by the system, is in fact the correct user profile for the person currently using the system. If the wrong profile is selected, then the system will likely make ineffective listings of recommended programs. Therefore the system takes feedback from the user, via a query, in order to provide programming that is most desirable to the instant user.

Considering claim 21, the claimed subject matter is met by Herz, col. 29, lines 1-26.

Considering claim 22, the claimed subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Considering claims 23-27, Herz meets all subject matter, col. 17, lines 35-65; col. 23, lines 1-15; col. 26, lines 5-65; col. 46, lines 1-20.

Considering claims 29-31, see Herz, col. 26, lines 1-21; col. 29, lines 1-25; col. 29, lines 30-65 & col 45, lines 20-65; col. 49, lines 1-10.

Considering claim 32, the claimed method for presenting TV programs to a viewer, comprises steps that correspond with subject matter mentioned above in the rejection of claim 20, and is likewise treated. As for the additional feature, of the *'first list arranged without viewer input'*, in Herz the arrangement of the virtual lists are without user input, col. 45, lines 35-45.

Considering claim 33, the claimed subject matter reads on the user in Herz manually selecting a different program, not on the recommended list of programs using a remote control device, such as remote control device 1008, see col. 46, lines 42-60; Fig. 10.

Considering claim 34, by definition, at least some of the programs presented to the customer in Herz, based on an agreement matrix re-calculated as a result of an adjusted customer profile, would be different from the first list of recommended programs, as long as the programs

that were actually watched by the customer had content attributes different from the content attributes of the programs in the first recommended list of programs.

Considering claim 36, the second list in Williams is unrelated to the first list, as to the extent that the viewer's profiles & preferences change due to a different or unrelated viewing history.

5. Claims 35 & 37 rejected under 35 U.S.C. 103(a) as being unpatentable over Herz & Williams, and further in view of Wugofski, (U.S. Pat # 7,152,236).

Considering claims 35 & 37, even though Williams teaches that the system prompts the user regarding the presented list of recommended programs, the reference does not directly discuss whether the different lists are available at the receiver. However, Wugofski provides a teaching of providing subscribers with a GUI, wherein multiple Fav/recommended channels are simultaneously displayed to the user for selection, see Fig. 6; col. 7, lines 20-60. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of providing the user with multiple list Fav channel lists simultaneously, as taught by Wugofski, at least for the benefit of allowing the user to provide a visual review of multiple lists.

Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Reuben M. Brown/
Patent Examiner, Art Unit 2424